

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 2077 of 1997

in

SPECIAL CIVIL APPLICATION No 4827 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and  
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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LALBAHADURSINH NENSING CHHATRI

Versus

SECRETARY ANILBHAI M SHAH

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Appearance:

MR AM PAREKH for Petitioner  
MR MB FAROOQUI for Respondent No. 1, 2

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CORAM : MR.JUSTICE B.C.PATEL and  
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 29/04/98

ORAL JUDGEMENT Per : B.C.Patel, J.

1. Rule. Mr. Farooqui waives service of Rule. The applicant has filed this application for taking action

against the respondent herein, under the provisions contained in the Contempt of Courts Act, on the ground that the order passed by the learned Single Judge of this Court is not being complied with by the respondents.

2. It appears that on 18.7.97, learned Single Judge issued Rule as no one appeared on behalf of the respondents despite the service of notice, and in the facts and circumstances of the case, by way of interim relief, learned Single Judge ordered that the petitioner shall be paid the due amount of salary in accordance with law and that he shall be paid regular monthly salary month by month in future as may be due and payable to him.

3. It is required to be noted that the petitioner approached the authority under the Payment of Wages Act by submitting application no. 488 of 1994 under section 15 of the Payment of Wages Act and the authority, by order dated 24.1.96 passed an ex parte order directing the respondents herein to pay the sum of Rs. 8,000/- and further sum of Rs. 610/- towards the court fees. The authority also directed that the cost of Rs. 251/- be paid to the applicant by the respondents. Mr. Farooqui, appearing for the respondents submitted that respondent no.1 is a Secretary and respondent no.2 is a Chairman of a Co-operative Housing Society. According to the case presented by the applicant he was a Watchman in the office. He further submitted that Authority exercising powers under the Payment of Wages Act, has not considered whether the Act under which powers are to be exercised is applicable or not. According to Mr. Farooqui the Payment of Wages Act does not apply as the respondent is a Cooperative Housing Society and the said Society is neither 'Industry' nor 'establishment'. He submitted that though the Act is not applicable the order is passed.

3. Mr. Farooqui submitted that the applicant has suppressed the material facts from this Court and has made false statement in the application with a view to obtain favourable orders. He submitted that as the applicant has mislead the Court, process should be issued against the applicant for abuse of process of law and for making a false statement on oath before the Court.

4. He took us through the order and submitted that the Authority has no jurisdiction to direct the Society to pay regularly monthly salary as and when it becomes due and that the authority being aware about its jurisdiction, has not passed such an order. He submitted

that despite the fact that no such order is passed, in a prayer clause on oath a statement is made which is false within the knowledge of the applicant. Learned Advocate pointed out from the order that before the authority grievance was made that he is not paid the salary for a period from September to July, 1994 and the authority has taken the view that salary is not paid and only direction given is to pay the sum of Rs. 8000/- (Eight Thousand only) to pay Rs. 610/- (Six Hundred Ten) towards court fees and Rs. 250/- (Two Hundred Fifty) towards cost. Except to make the aforesaid payment no direction is given to pay monthly salary regularly. It is submitted that despite clear order false statement is made on oath.

4. Mr. Parekh, learned counsel for the applicant could not point out from the order that the authority exercising the powers under Payment of Wages Act directed the respondent to pay regularly monthly salary to the applicant. He fairly stated that there is no such direction. However, before the learned Single Judge on oath, an application is made and in prayer clause in the said application, it is prayed that appropriate writ, order or direction directing the respondent to pay regular salary to the petitioner as ordered by the Labour Court, Ahmedabad in Recovery Application No. 488/94 on 24.1.96, be issued. Mr. Parekh fairly stated that this statement is incorrect statement and that Labour Court has not given such direction. We do not know under what circumstances, such statement has been made by the petitioner in the petition. It appears that on the basis of such statement, the order came to be passed by the learned Single Judge.

5. Material aspect pointed out by learned advocate for the respondents is that the order which was passed by the Payment of Wages Authority was an ex parte order and soon after the order came to be passed, the Payment of Wages Authority was approached by filing Misc. Civil Application No. 73/96 inter alia praying to set aside the ex parte order and to grant interim stay. It is required to be noted that the notice has been received by the applicant herein who is original opponent in that Misc. Civil Application No. 73/96. At the request of the parties, i.e. the applicants and respondent of that application who are also parties before this Court, the Court granted adjournments which is clear from the rojakam shown to us by learned advocate Mr. Farooqui. True copy of the same is ordered to be taken on record. It is also pointed out that another recovery application was preferred being Recovery Application No. 1414 of 1994 wherein the applicant herein used to remain absent and

therefore that application has also been rejected. Mr. Farooqui, learned counsel for the respondent submitted before us that even the fact of payment of Rs. 2400/paid to the applicant has been suppressed by the applicant herein. He has shown to us zerox copies of the vouchers indicating that amount of Rs. 800/- was paid on 5.2.94 and the amount of Rs. 1600/- was paid on 3.3.94 to the applicant. Thus, material facts are suppressed by the applicant. It is disputed by the applicant stating that these two vouchers pertain to regular salary. We do not enter into this disputed question. Suffice it to say that the applicant has suppressed material fact and has come before this Court by misleading statement and therefore, we would not like to entertain this application any further. Therefore, we reject this application. Rule discharged.

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Amp/-